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OFFICE OF PETITIONS

In re Application of :
Mizuno, et al. :
Filed: July 22, 2003 : ON PETITION
Application No. 10/626,459 :
Attorney Docket No.: 3831.03 :
:

This decision is in response to the "Petition Under 37 CFR 1.17(h)," filed December 29, 2003, requesting that the newly submitted Figures 13, 13B and 14A-14E be accepted as replacements for prior Figures 13, 14 and 15 A-15E.

The petition is hereby **DISMISSED**.

The above-identified application was filed July 22, 2003. The "Notice to File Corrected Application Papers ("Notice") mailed December 8, 2003 indicated, *inter alia*, that Figures 13B and 14B-E appeared to have been omitted from the application as filed.

The Notice permits applicant to either: (1) establish prior receipt in the PTO of page 7 of the specification; (2) submit the omitted page of specification and accept the date of such submission as the application filing date. An assertion that the missing page of specification was in fact deposited in the PTO with the application papers must made by way of petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)); or (3) take no action thereby constructively accepting the application filed as in the USPTO without the omitted item. Failure to take any action requires amendment of the specification to cancel reference to the omitted item.

Petitioners contend that Figures 13B and 14B-E were, in fact, filed in the PTO on July 22, 2003, but that the figures were mislabeled.

A review of the sheets of drawings filed July 22, 2003, confirms that they included one sheet labeled Fig. 13, one sheet labeled Fig. 14, and one sheet labeled Fig. 15A, Fig. 15B, Fig. 15C, Fig. 15D, and Fig. 15E. Petitioners have established that it was their intent to label the figures as Fig. 13A, Fig. 13B, 14A, 14B, 14C, 14D, and 14E respectively. Since it is obvious from the petition that no drawings were actually missing on July 22, 2003, and that applicant does not intend to file any additional sheets of drawings, the application will be processed using the 15 sheets of drawings filed on July 22, 2003.

However, the Notice was correct in advising applicant that a drawing of Figures 13B and 14B-E appeared to have been omitted. Therefore, the Notice was properly mailed and will not be withdrawn.

The petition fee will not be refunded, since the petition was not necessary to correct any PTO error.

To avoid further delay in the examination of the application, a letter to the draftsman correcting the numbering of the mislabeled drawing figures should be filed prior to the first Office action.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of July 22, 2003, using the 15 sheets of drawings filed on that date.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



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